LAU LIM PENG v. PUBLIC PROSECUTOR

[A.Cr.J. (Chang Min Tat J.) April 18, 1968]
[Ipoh — Criminal Appeal No. 12 of 1968]

Road Traffic — Dangerous driving — Lorry overturning at bend — Death of road-user — Road Traffic Ordinance, 1958, s. 34A.

Criminal Law and Procedure — Sentence — Dangerous driving — What is adequate sentence.

The appellant was charged for causing the death of a motor-cyclist by driving a lorry in a manner which, having regard to all the circumstances, was dangerous to the public, an offence punishable under section 34A(1) of the Road Traffic Ordinance, 1958. The motor-cycle and the lorry were proceeding in the same direction. On reaching a dangerous bend within the speed limit area, the lorry which was approaching from behind the motor-cycle ridden by the deceased, overturned and knocked into it. The appellant was convicted of the offence charged. Considering the fact that the appellant had no recorded convictions, the president of the sessions court imposed a sentence of $1,000 fine. He appealed against the conviction and the sentence.

Held, dismissing the appeal: (1) in the absence of any explanation to the contrary, a driver who drives a vehicle in a speed limit area at such a speed and in such a manner as to be unable to avoid overturning at a bend which is known to be dangerous, and running from behind into another vehicle, is guilty of driving in a manner which is dangerous to the public;

(2) in view of the increased volume of road traffic and the growing concern of the legislature in the rise in the number of serious driving offences, the sentence of $1,000 fine was manifestly inadequate. The sentence was therefore substituted to one of six months' imprisonment.

Cases referred to:—

(1) *R.* v. *Downey* [1954] M.L.J. 148.

(2) *Public Prosecutor* v. *Quek Bak Seng* [1963] M.L.J. 137.

(3) *Public Prosecutor* v. *Rudguard* [1939] M.L.J. 56.

CRIMINAL APPEAL.

Lal Harcharan Singh for the appellant.

Eusoff bin Chin (Deputy Public Prosecutor) for the respondent.

Chang Min Tat J. (delivering oral judgment): The appellant was, in the sessions court at Ipoh on 13th December, 1967, charged with causing the death of one Au Siak Kong by driving motor-lorry No. AJ 3775 in a manner which, having regard to all the circumstances, was dangerous to the public, an offence punishable under section 34A(1) of the Road Traffic Ordinance No. 49 of 1958, the circumstances as indicated in the section including the nature, condition and use of the road, and the amount of traffic which is or might be expected to be on the road.

The accident occurred well within the municipal limits of Ipoh at a spot, which is, in fact, less than a mile from where I am sitting. The spot was a slight bend on the Kuala Kangsar-Ipoh Road as one approaches Ipoh. It is in evidence that this was, in fact, a dangerous bend, and it is also in evidence that there is a sign board erected just before this bend, which indicates that this is a dangerous bend and, in fact, a light is made to shine at all times to draw the attention of motorists to the nature of the bend. The bend is in a built-up area, and it follows that driving at this place calls for a greater degree of care and caution than would be expected on a straight stretch of road in open country. The motor-lorry was proved to have overturned and was also proved to have knocked into a motor-cycle ridden at the time by the deceased and pillioning P.W.1, though it was not very clear on the evidence whether the collision was occasioned by the motor-lorry running into the motor-cycle or whether it knocked into the motor-cycle while overturning.

The evidence of the pillion rider was to the effect that whilst she was on this motor-cycle, which was then proceeding at a speed of 20 miles to 30 miles per hour, she heard approaching from behind a lorry and shortly afterwards she felt herself being knocked and became unconscious. The time factor would lead to an inference of speed on the part of the lorry-driver. As was to be expected, her view was to the front and she did not see the motor-lorry approaching from behind. There is no doubt, however, that the motor-cycle, which was proceeding in the same direction as the motor-lorry, was on its proper side of the road — in fact, near the grass verge. It is now suggested to me that there is no evidence of driving in a manner that was dangerous to the public and that all that the prosecution was capable of sustaining was possibly a charge for negligent driving under section 36 of the Road Traffic Ordinance. Opportunity was taken to object that the sketch plan drawn by the police was not a proper one in that it omitted from it certain details that were obviously present on the road when the motor-lorry overturned on the metal surface. I agree entirely with the criticism levied against the police, and I could not make a more fervent hope that the police would be more careful in the discharge of their duties in future. However, there is a photograph taken of the motor-lorry showing the ground traversed by it before it overturned and came to a stop. And while it is quite clear from that photograph that there are certain scratches and marks made by the motor-lorry when it was overturning and before it came to a stop, no brake-marks were, in fact, discernable on the surface of the road.

The charge, however, is for driving in a manner which, having regard to all the circumstances, was dangerous to the public. If one drives in a built-up area, in which a speed limit is imposed, at a speed which causes one to overturn at a corner, which is known to one and made known to one as being a dangerous corner, then I cannot see how it can be said, in the absence of any acceptable explanation, that the driver

was not driving in a manner which, having regard to all the circumstances, is dangerous to the public. Put simply, when you come to a corner in such a way that you lose control of your vehicle and, in fact, overturn, can you be said not to be negligent or not to be driving in a manner that is dangerous? To adopt the words of Spenser-Wilkinson J. in *R.* v. *Downey*,[1] the dangerous manner of the driving consisted in driving the vehicle so fast and in such a manner as to be unable to avoid overturning and running from behind into an innocent motor-cyclist riding on his side of the road at a time when there was no other traffic to make it necessary to drive anywhere near him. The appeal against the conviction under section 34A of the Road Traffic Ordinance is dismissed.

On the question of sentence, an appeal was, in fact, lodged against the fine of $1,000 for an offence under section 34A of the Road Traffic Ordinance. The appeal against sentence was, however, not grounded on any allegation that it was manifestly excessive in the petition of appeal. No cross-appeal against the inadequacy of the sentence has been lodged. However, I now propose to revise the sentence because, quite clearly, on any appeal, the question is always subject to revision and, in my view, the sentence was, in the circumstances of the case, manifestly inadequate.

On the question of sentence, learned counsel for the appellant argued against altering the sentence. What the learned president considered was this:—

> "Although the court was aware of the decision of Mr. Justice Spenser-Wilkinson in the case of *R.* v. *Downey*,[1] and the decision of Mr. Justice Gill in the case of *Public Prosecutor* v. *Quek Bak Seng*,[2] yet the court considered that the appellant might be given the option of a fine and that a fine of only $1,000 would be adequate punishment in this case as the appellant has no recorded convictions and has therefore never been to prison."

The only consideration which swayed the learned president in imposing the sentence that he did impose was the fact that the appellant had no recorded convictions. I am aware that the learned president used the words "no recorded convictions" advisedly because of the provision in the Road Traffic Ordinance whereby any endorsement on a driving licence for a traffic offence could be deleted after a lapse of 3 years if during those 3 years no further order was made against the driver. I also propose to deal with the appellant as a person with no previous conviction. In my view, however, the learned president, while paying lip-service to the two judgments cited by him, has not considered them at all or adequately. In the first of the two cases quoted by the learned president, what Spenser-Wilkinson J. (as he then was) said was this:—

> "Whilst I am far from laying down that a sentence of imprisonment must always be imposed in these cases it seems clear that once the degree of rashness or negligence above described has been proved (that is, to sustain a charge under section 304A of the Penal Code) there cannot be many cases in which a sentence of a fine would be an adequate punishment."

And bearing that in mind, he altered the fine imposed on the respondent, Downey, also a first offender, and substituted for it a sentence of 5 months' imprisonment.

In the second case, Gill J. adopted the *dictum* of Spenser-Wilkinson J. and substituted a sentence of 6 months' imprisonment for the fine of $600. The accused was similarly a first offender.

There is also a rather earlier case, the case of *Public Prosecutor* v. *Rudguard*,[3] in which Terrell Ag.C.J., took into consideration the fact that the accused had already stood his trial once, and had a clear record, and made no effort to evade his responsibilities, and also the fact as stated by the learned magistrate that at that early time this type of offence was not prevalent. But in spite of all these factors, Terrell Ag.C.J., nevertheless altered the sentence of a fine to one of six months' rigorous imprisonment.

Now *Rudguard's* case, *supra*, was decided in 1939 when traffic was relatively light, and I think I am not wrong in saying that at that time in Perak there would be less than 10,000 cars. Since 1939, since in fact after the war, and after the restrictions caused by shortages were removed, traffic has increased enormously without there being any corresponding increase in the size of roads. Clearly, our roads are rapidly becoming totally inadequate for the number of cars that are being licensed for use on the road. And it is also a fact that not only has the number of cars and lorries increased but their size, power, and efficiency have also increased. If in 1950 it could be said in England that they were trying to squeeze a quart of traffic into a pint of road, how much worse is the position in Malaya today where the main trunk road in Western Malaya is still for single lane traffic either way. In all the circumstances, it behoves everyone in charge of a motor vehicle, be it a big or a small one, to drive with care, with this proviso, that the bigger the vehicle the greater the care that should be exercised.

Furthermore, it is also well known that there has been a considerable increase in the number of accidents involving motor vehicles, and in particular motor-lorries. The Legislature has acted to limit the number of accidents. Whereas previous offences of causing death by a rash or dangerous act were punished under section 304A of the Penal Code, which provided for a maximum sentence of 2 years or a fine, or both, the Legislature had since deemed it fit and proper to increase the sentence for such offences now punishable under section 34A of the Road Traffic Ordinance to a term of imprisonment not exceed-

ing 5 years or to a fine not exceeding $3,000, or to both such imprisonment and fine.

The learned president, with respect, seems to me to have not only disregarded pronouncements from the Bench of the High Court by my predecessors and my brother Gill, but to have also ignored the fact that the Legislature has regarded with growing concern the increase in the number of serious driving offences. I am always loath to disturb sentences imposed by magistrates and presidents, but in all the circumstances of this case, it appears to me that I will be failing in my duty if, having come to the conclusion I did that the sentence was manifestly inadequate and that the discretion vested in the president was not judicially exercised, I fail to revise it.

I therefore order that the sentence of a fine of $1,000 be set aside, and if paid to be refunded to the appellant, and a sentence of 6 months' imprisonment substituted. The disqualification will stand.

Sentence of fine set aside.

Sentence of imprisonment substituted.

VASUDEVAN PILLAI & ANOR. v. THE CITY COUNCIL OF SINGAPORE

[P.C. (Viscount Dilhorne, Lord Hodson & Lord Upjohn) April 23, 1968]

[Privy Council Appeal No. 35 of 1965]

Master and Servant — Summary dismissal — Inquiry — Whether audi alteram partem rule applied — Municipal Ordinance (S.S. Cap. 133), ss. 17 & 383.

Administrative Law — Rules — Whether they had statutory force — Holding of inquiry — Requirement of natural justice — Curable on appeal.

This was an appeal from the judgment of the Federal Court of Malaysia ([1965] 2 M.L.J. 51). The appellants, who were daily rated unskilled employees of the respondent council, had been dismissed without due notice for refusing to obey an order given to them by a *serang* on behalf of the respondents. Before their dismissal an inquiry into the incident was held by an officer of the respondents. The appellants appealed against their dismissal to a sub-committee of the establishments committee of the respondents which dismissed their appeal.

Following this the appellants sought a declaration that their dismissal had been wrongful and that they were still in the employ of the respondents.

At the trial, the appellants had put in evidence, with consent, some of the rules formulated by the respondents with regard to the recruitment, engagement and discipline of the staff. The appellants contended first, that the rules were expressly or by implication part of the terms of employment, or that they were so made by the operation of statute or some statutory instrument having the like effect. Alternatively they contended that they were entitled to the benefit of the statutory instrument and entitled to sue for its breach. Secondly, upon the construction of the rules, before they were dismissed they were entitled to an inquiry to which the rules of natural justice applied. Thirdly, that these rules of natural justice had not been observed.

Held, dismissing the appeal: (1) the appellants must rely on the rules to establish their case. On the evidence the rules were not expressly or by implication incorporated into their contracts of service. The onus of establishing that the rules, being made under and by virtue of section 17 of the Municipal Ordinance, had statutory force and that they were entitled at law to their benefit, lay upon the appellants but they had not discharged that onus. Accordingly the appellants failed to establish a ground upon which they could pray in aid the relevant provisions of the rules to support their case that the principles of natural justice applied before they could be validly dismissed;

(2) assuming that the appellants could rely on the rules either as part of their contracts of employment, on the construction of the rules down to the conclusion of paragraph 3(b)(v), that is, until they were dismissed, the employees were not entitled to receive notice of the inquiry to be present at it. Only if the president or deputy president reached the conclusion that the circumstances warranted a decision to dismiss and the decision was conveyed to the employee under paragraph 3(b)(vi) that the principles of natural justice start to be applicable;

(3) assuming that the principles of natural justice were applicable before the employees were dismissed, the procedure had been defective. But as the hearing of the appeal before the sub-committee of the establishments committee had been in the nature of a rehearing and evidence had been called *de novo*, the defect at the earlier stage was cured by the later proceedings.

Cases referred to:—

(1) *Ridge* v. *Baldwin* [1964] A.C. 40 at p. 65.

(2) *Walter Annamunthodo* v. *Oilfields Workers' Trade Union* [1961] A.C. 945.

In the High Court, Tan Ah Tah J., as he then was, delivered the following grounds of judgment on November 22, 1963:

Tan Ah Tah J.: In this action the plaintiffs, who were daily rated labourers, were dismissed from the defendants' employment in May 1957 on the ground that they had refused to obey the instructions of one of their superior officers. The plaintiffs asked for a declaration that the defendants were in the circumstances not entitled to determine their services and for a further declaration that they were still in the employ of the defendants. In the alternative, the plaintiffs claimed damages for wrongful dismissal.

At the material time the plaintiffs were employed at the power station at Pasir Panjang. There were several boilers at this power station. In respect of each boiler there were several items of equipment which had to be cleaned from time to time. These were the boiler itself, the boiler drums, the air heater and the ducting.

On the 23rd May 1957, the plaintiffs were instructed by one Ishak, who was employed by the defendants as a serang, to carry out certain work in connection with boiler No. 4. The second plaintiff stated in evidence that he was asked by Ishak to clean the ducting only. The first plaintiff did not give evidence at the hearing. I was